HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.6922 OF 1997

Between:

The Orugallu District Co-operative Marketing
Society Ltd., represented by its Business Manager,
Kareemabad Road, Warangal District.
…Petitioner

AND

The Industrial Tribunal-cum-Labour Court,
Warangal, represented by its Presiding Officer
and others. ...Respondents

:: O R D E R :

Counsel for the petitioner : Sri B. Narayana Reddy

Counsel for respondent Nos.3 to 19 : Sri V. Hariharan

11th April, 2007

Whether the Presiding Officer of Industrial Tribunal-cum-Labour Court, Warangal (hereinafter referred to as 'the Labour Court') could rely on settlement (agreement) arrived at between the parties during the course of conciliation proceedings and direct the petitioner to pay difference of wages to the private respondents in terms of the agreement is the question which arises for determination in this petition filed by the Orugallu District Co-operative Marketing Society Ltd., Warangal (for short, 'the society') for quashing order dated 6-11-1996 passed in M.P.No.18 of 1993.

The private respondents are employed as salesmen in the services of the petitioner society. They and five other persons jointly filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') for payment of difference of pay vis-à-vis M. Kumaraiah, who too was performing the duties of salesman by asserting that despite the settlement reached during the course of conciliation proceedings, the management of the society has not paid wages to them at par with M. Kumaraiah.

In the application filed by them, the respondents and their co-employees alleged that even though all the salesmen employed in the services of the petitioner were performing identical duties, different pay scales have been prescribed for them. They averred that the basic pay of M. Kumaraiah was fixed at Rs.740/-, whereas they were being paid salary with the basic pay of Rs.530/- per month. They relied on the agreement arrived at before the Assistant Labour Commissioner-II vide R.C.No.1/ACL/92 and pleaded that even after having settled the matter in the conciliation proceedings, the management of the society was not paying them difference of wages.

In the counter filed on behalf of the petitioner, it was averred that the service conditions of the employees are governed by the Special Bye-laws and that as per bye-law No.3 of the Special Bye-laws, the post of salesman carries the pay scale of Rs.530-15-590-20-850 and

that all persons holding the post of salesman were being paid salary in the same scale. The petitioner denied the assertion of the private respondents that M. Kumaraiah is drawing pay in the scale of Rs.740-15-950-20-1150. The factum of initiation of conciliation proceedings was admitted, but it was averred that the Business Manager of the society, who participated in the conciliation proceedings, was not authorised to enter into an agreement with the employees.

The learned Presiding Officer noted that the parties had entered into a settlement during the course of conciliation proceedings and held that the same is binding on the management. He noted the plea of the petitioner that the Business Manager is not empowered to sign the agreement, but rejected the same by recording the following observations:

"……..The submissions made by the respondent is not sustainable. Once an agreement arrived before the A.C.L., Warangal-II vide Rc. No. 1/ACL/92, which shall binding on all the parties. W.W-1 has also clarified in his evidence that he along with other petitioners were participated in the conciliation proceedings, an agreement was entered and the Management also agreed to pay the scales that of Koumuraiah, which is binding. The rental evidence adduced by the management also goes to show that the agreement was entered and the said agreement is binding. In support of the petitioners claim, the counsel for the petitioners has relied upon a decision reported in II L.L.J., High Court of A.P. Writ Appeal No. 1040/87 – Page 318 – (The Management of Agnigundala Lead Project Hindustan Zinc Ltd and others vs. Hindustan Zinc Workers Union and another) Industrial Disputes Act, 1947 – Sec. 2 (p), 18 (1); wherein it was held "This is a clear case where the management is guilty of dishonouring its commitments under a settlement, whether it is called the 'understanding' or the 'minutes of discussions' after taking full advantage of the terms thereof. The settlement was signed by responsible officers and it cannot be said that they acted without authority or in excess of authority. "The said proceedings are binding the principles laid down in this case and can be applied in our present case condoned. In our present case, an agreement was arrived between the parties and the said agreement is binding. In support of the petitioners' claim, they also relied upon a decision of Netha Spinning Mills v. Govt. of A.P. in W.P. No.17801 of 1988 under I.D. Act, 1947, Sec.10(1)(d), 12(2), 18(3) and 10(2), wherein it is held "Settlement between the management and the union regarding rationalisation of departments and

posts is binding not only on the union but also on all the workmen be it a majority union or a minority one. Government having upheld such settlement and declined to make a reference once at the instance of workmen whose designations have been affected as a result of settlement, cannot subsequently make the self same reference without any additional reasons." The principles laid down in this case also can be applied in our present case. In support of the petitioners' case, they relied upon a decision of Supreme Court of India – F.J.R. Vol.68 – Page 220 (Security Paper Mill, Hoshangabad v. R.S. Sharma and others) I.D. Act. 1947, Sec.2(p); wherein it was held "Agreement arrived at during conciliation proceedings is binding on all workmen." This ruling also supports the case of the petitioners. The agreement reached between the parties before the conciliation officer is legally binding between the parties…….

I have gone through the agreement entered in between management and the petitioners. In that agreement, the respondent has agreed to implement the said proceedings, which reduced into writing. Ex.W-2 is the said proceedings. The issue for settlement of differential pay scales, after verifying the relevant records produced, the management has agreed to fix the scales of all the salesman uniformally on par with one M. Komuraiah. Futher, on the issue of seniority, advised both the parties to have an understanding and settle the matter amicably. The management is advised to implement the scales according to the minimum wages notification as it falls under the scheduled employment under Minimum Wages Act and on the request of both the parties the conciliation proceedings are closed. The respondent has taken a specific plea that petitioner No.6 is not working in the society and petitioner No.1 is removed from the service of misappropriation of the funds of the society, as such they are not entitled for the said claim. The said plea was taken by the respondent. The petitioners have not rebutted by way of evidence. As such, petitioners No.1 and 6 are not entitled to claim, whereas the other petitioners are entitled to claim difference of wages on par with that of Komuraiah and the agreement (Ex.W2) is binding on the management. So, under such circumstances, it should be held that the petitioners, excepting petitioners No.1 and 6 are entitled to claim the difference of wages on par with that of Komuraiah. Accordingly, the petition is partly allowed in the circumstances of the case, without costs."

Sri B. Narayana Reddy, learned counsel for the petitioner argued that the agreement entered into between the private respondents and the Business Manager of the petitioner society cannot be treated as binding on the petitioner because the officer concerned was not authorised to be a party to such agreement. Learned counsel

emphasised that all persons holding the post of Salesman are being paid salary in the pay scale of Rs.530-850/-, and argued that the learned Presiding Officer committed a serious illegality by directing payment of the difference of wages to the private respondents.

Sri V. Hariharan, learned counsel for the private respondents supported the order of the Labour Court and argued that the settlement reached between the parties during the course of conciliation proceedings is binding in terms of Section 18(3) of the Act and without challenging the same in accordance with law, the petitioner cannot seek the Court's intervention for being relieved of the obligation incurred in terms of the settlement.

I have considered the respective submissions. Admittedly, the petitioner has not questioned the settlement/agreement reached between the parties in the course of conciliation proceedings held by Assistant Commissioner of Labour-II, Warangal vide R.C.No.1/ACL/92. This being the position, the direction given by the learned Presiding Officer to the petitioner to pay wages to the workers in accordance with the terms of the settlement cannot be termed as illegal.

Section 18 of the Act, which makes the settlements and awards binding on the parties and even non-parties in some cases, reads as under:

"18. Persons on whom settlements and awards are binding:

(1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on-

(a) all parties to the industrial dispute;

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
(c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
(d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

The binding character of the settlement was highlighted in **Tata Engineering and Locomotive Co. Ltd. v. Their Workmen**[1]. While negating the challenge by the workmen to the settlement arrived at between the parties, the Supreme Court observed:

> "It is nobody case that any of the signatories to this declaration was not one of the said 635 workers or that any of the signatures appearing underneath the declaration was forged or fictitious. And if that be so, the assertion by each signatory to the declaration that he was a member of the Sanghatana has to be taken at its face value and presumed to be correct until it is shown to be false. The onus to prove the falsity of the assertion in the case of any particular workman thus rested heavily on the Telco Union but it made no attempt to discharge the same. It has been urged on its behalf that the very fact that 400 workmen had challenged the Settlement claiming to be members of the Telco Union showed that the declaration made earlier was not correct. Now it is true that out of a total of 635 workmen, 564 signed the declaration and later on 400 challenged the Settlement. The only reasonable inference to be drawn from that circumstance would, however, be that at least 329 workers changed sides in between February 18, 1970 and April 14, 1970. It cannot be further interpreted to mean, in the absence of any other evidence on the point, that the declaration, when made, was false. In this view of the matter we must hold that the declaration constitutes presumptive proof of the fact that the signatories to it were all members of the Sanghatana when they signed it."

In **ITC Ltd. Workers' Welfare Association v. Management of**

ITC Ltd.[2], the Supreme Court reiterated the binding character of the settlement and held:

> "What follows from a conspectus of these decisions is that a settlement which is a product of collective bargaining is entitled to due weight and consideration, more so when a settlement is arrived at in the course of the conciliation proceedings. The settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of mala fides such as corrupt motives on the part of those who were instrumental in effecting the settlement. That apart, the settlement has to be judged as a whole, taking an overall view. The various terms and clauses of settlement cannot be examined in piecemeal and in vacuum."

In view of the above stated legal position, it must be held that the learned Presiding Officer did not commit any error or illegality by directing the petitioner to pay wages to the private respondents in accordance with the terms of the agreement reached between the parties during the course of conciliation proceedings and the writ petition is liable to be dismissed. Ordered accordingly.

G.S. SINGHVI, C.J.

11th April, 2007

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[1] (1981) 4 SCC 627

[2] (2002) 3 SCC 411